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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

--000--

THE MAGNAVOX COMPANY, a corporation  
and SANDERS ASSOCIATES, INC., a  
corporation,

Plaintiffs,

vs.

BALLY MANUFACTURING CORPORATION,  
a corporation, CHICAGO DYNAMIC  
INDUSTRIES, INC., a corporation,  
et al.,

Defendants.

Civil Action  
No. 74 C 1030

DEPOSITION OF NOLAN K. BUSHNELL

July 3 1974

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INDEX

DEPOSITION OF NOLAN K. BUSHNELL

Page

Examination by Mr. Anderson ..... 3

DEFENDANTS' EXHIBITS

FOR  
IDENT.

1	Notice of Taking Deposition.....	24
2	Group of documents being Royalty Agree- ments and Affidavits .....	26
3	Copy of United States patent 3,793,483 .....	34
4	Copy of affidavit of John C. Wakefield .....	77

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BALLY MANUFACTURING CORPORATION,  
a corporation, CHICAGO DYNAMIC  
INDUSTRIES, INC., a corporation,  
et al.,

Defendants.

BE IT REMEMBERED that pursuant to Notice of Taking  
Deposition, and on Wednesday, the 3rd day of July 1974,  
commencing at the hour of 10:00 o'clock a.m. thereof, at the  
law offices of Messrs. FLEHR, ROHBACH, TEST, ALBRITTON &  
HERBERT, 160 Sansome Street, San Francisco, California, before  
me, RUTH E. BENTON, a Notary Public in and for the City and  
County of San Francisco, State of California, personally  
appeared

NOLAN K. BUSHNELL,

called as a witness on behalf of the plaintiffs, who, being  
by me duly sworn to testify the truth, the whole truth and  
nothing but the truth herein, was thereupon examined and  
testified as hereinafter set forth.

-- --

Messrs. THOMAS A. BRIODY AND NEUMAN, WILLIAMS, ANDERSON &

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52 SECOND STREET

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1 OLSON, by THEODORE W. ANDERSON, Esq., 77 West Washington Street,  
2 Chicago, Illinois 60602, appeared as counsel on behalf of the  
3 plaintiffs.

4 Messrs. FLEHR, KOEACHE, TEST, ALBRITTON & HERBERT, by  
5 THOMAS O. HERBERT, Esq., and BAYLOR G. RIDDELL, Esq., appeared  
6 as counsel on behalf of the defendant ATARI, INC.

7 Messrs. FITCH, EVEN, TABIN & LUEDEKA, by DONALD L. WELSH,  
8 Esq., 135 South LaSalle Street, Chicago, Illinois 60603,  
9 appeared as counsel on behalf of the defendants BALLY MANU-  
10 FACTURING CORPORATION, MIDWAY MANUFACTURING & EMPIRE DISTRIBU-  
11 TING.

12 Observers present: EDWARD S. WRIGHT and JAMES SHOLER.

13  
14 MR. ANDERSON: I understand, Mr. Welsh, you had a state-  
15 ment for the record?

16 MR. WELSH: Yes. The depositions of Bally, Midway and  
17 Empire taken last week in Chicago, there was a claim of confi-  
18 dentiality made with respect to certain documents produced by  
19 Bally and testimony with respect to these documents on behalf  
20 of Bally. I will now withdraw that claim of confidentiality  
21 both with respect to the documents and the testimony.

22 MR. ANDERSON: I think that is quite satisfactory to us of  
23 course and I think it expedites things a good deal.

24 MR. WELSH: I presume you will get that to the reporter?

25 MR. ANDERSON: Yes I will get that to Mr. Shapiro, and  
26 does that vitiate our signed stipulation?

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SAN FRANCISCO 94105

52 SECOND STREET

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1 MR. WELSH: No I would like to keep that in effect because  
2 there may be other documents such as those that we have agreed  
3 to produce from--

4 MR. ANDERSON: Then the stipulation remains in effect but  
5 there is nothing under it at the moment at all to the best of  
6 my knowledge.

7 MR. WELSH: Right.

8 MR. ANDERSON: That is fine.

9 MR. HERBERT: The removal of the confidentiality is  
10 certainly in accordance with the wishes of Atari.

11 MR. ANDERSON: I think maybe just for the record show the  
12 presence of these two gentlemen.

13 MR. HERBERT: We have two observers here, Edward Wright and  
14 James Sholer.

15 - - -

16 Whereupon,

17 NOLAN K. BUSHNELL,

18 called as a witness on behalf of the plaintiffs, having been  
19 duly sworn by the Notary Public to testify the truth, the whole  
20 truth and nothing but the truth herein, was examined and testi-  
21 fied as follows:

22 EXAMINATION BY MR. ANDERSON:

23 Q. Mr. Bushnell would you please state your full name?

24 A. Nolan K. Bushnell.

25 Q. Where do you reside?

26 A. I reside at 6101  
Almirida, Campbell, California.

1 Q. Is Campbell in the San Jose vicinity?

2 A. Yes it is.

3 Q. By whom are you employed?

A. Atari Incorporated.

4 Q. That is A-t-a-r-i, I-n-c. period?

5 A. That's correct.

6 Q. Where is Atari located?

A. 14600 Winchester

7 Boulevard, Los Gatos, California.

8 Q. Is Los Gatos also in the San Jose vicinity?

9 A. Yes it is.

10 Q. What is your position with Atari, Inc.?

11 A. I am president.

12 Q. Do you hold any other titles or positions?

13 A. I am chairman of the board.

14 Q. Do you hold any other titles or positions?

15 A. No I do not.

16 Q. Do you hold any other titles or positions in any other  
17 corporations?

A. Yes I do.

18 Q. What other corporations?

A. I hold the position of  
19 president of Syzygy Company, S-y-z-y-g-y.

20 Q. And that is Syzygy Company?

A. Yes.

21 Q. Is that a California corporation, do you know?

22 A. It's currently a proprietorship. It's going through  
23 incorporation currently.

24 Q. Has it ever been a corporation?

A. Yes it has  
25 incorporated under the name of Syzygy Game Company. Well,  
26 actually the assets of that corporation were purchased so

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SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 essentially, you know, the business was not purchased but simply  
2 the assets of that corporation were purchased.

3 Q. The assets of Syzygy Game Company were purchased by the  
4 proprietorship of Syzygy Company? A. Right.

5 Q. Which is now being formed into a corporation?

6 A. Right. We assumed the assets without assuming the liabilities.  
7

8 Q. When you say "we" who do you mean? A. Ted Olson.

9 Q. Ted Olson? A. Yes.

10 Q. O-l-s-o-n? A. Yes.

11 Q. Who else? A. There are a couple of other  
12 people. It's a small little game company which, you know, I  
13 really think is not material to this case.

14 Q. Is it in the video game business? A. It's in the  
15 game operating business, yes.

16 Q. In the video game operating business? A. Yes.

17 Q. Do you hold a controlling interest in Syzygy Company at  
18 the present time? A. Yes.

19 Q. Where does Syzygy Company operate? A. I don't have  
20 the address with me right now. It's on Walsh Avenue.

21 Q. Walsh Avenue in Los Gatos? A. In Santa  
22 Clara.

23 Q. Does the Syzygy Game Company or Syzygy Company place video  
24 games on the street? A. Yes.

25 Q. Where has it placed video games on the street?

26 A. Various places in the Santa Clara Valley.

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SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 Q. Anywhere outside of the Santa Clara Valley?

2 A. No.

3 Q. Do you hold a position in any other companies other than  
4 Syzygy Company and Atari, Inc.?

5 A. There are posi-  
6 tions--I hold a position in Atari Pacific but these are Atari  
7 subsidiaries. Do they need to be enunciated?

8 Q. At least we should identify them or I would like to. Atari  
9 Pacific?

A. Yes.

10 Q. Incorporated, is it?

A. Yes.

11 Q. I-n-c period and where is that located? At the same address  
12 as Atari Inc.?

A. No. It's in Honolulu and  
I do not have the address.

13 Q. What is your position with Atari Pacific, Inc.?

14 A. I am a member of the board.

15 Q. What is the nature of the business of Atari Pacific, Inc.?

16 A. It places and operates video amusement machines.

17 Q. Where does it place and operate video games or amusement  
18 machines?

A. In the Pacific Basin.

19 Q. Is that primarily in the Hawaiian Islands?

20 A. Yes, it is including Guam.

21 Q. For how long has Atari Pacific been in existence approxi-  
22 mately?

A. Six months.

23 Q. Has it ever placed games outside of the Hawaiian-Guam  
24 complex?

A. No it hasn't.

25 Q. Do you hold a position in any other companies?

26 A. No I do not.

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SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 Q. Does Atari Inc. have any other subsidiaries partially or  
2 wholly owned? A. We have a current invest-

3 ment in Japan but at this point Atari does not own that invest-  
4 ment.

5 Q. Does Atari, Inc. have an investment interest in the Japanese  
6 operation? A. Yes.

7 Q. Well, roughly what percentage interest?

8 A. Right now it's an accounts receivable interest and a cash  
9 interest and a formalization of that corporation is not complete.

10 Q. Does Atari, Inc. presently have any equity interest in the  
11 Japanese company? A. No.

12 Q. Is it contemplated that Atari, Inc. will have an equity  
13 interest in the Japanese company once the mechanics are com-  
14 pleted? A. It has not been determined

15 as yet.

16 Q. What is the name of the Japanese entity at the present  
17 time? A. Atari Japan.

18 Q. What is the nature of the business of Atari Japan?

19 A. To assemble and operate video amusement machines.

20 Q. Is it presently assembling video amusement machines?

21 A. Yes.

22 Q. Is it presently operating video amusement machines?

23 A. Yes.

24 Q. In what geographical area is it operating the machines?

25 A. Tokyo.

26 Q. From whence does it obtain the parts or raw materials to

1 assemble the video machines that they assemble?

2 A. Atari in the U.S.

3 Q. Does Atari assemble all of the component parts or does  
4 Atari, Inc. provide all of the component parts for Atari Japan?

5 A. No.

6 Q. What parts does Atari, Inc. provide to Atari Japan?

7 A. Computers.

8 Q. In addition to a computer what are the basic building blocks  
9 of an Atari video amusement machine? A. A cabinet,

10 CRT monitor, coin mechanism.

11 Q. Has Atari Japan assembled any video amusement machines for  
12 export? A. I don't know.

13 Q. Do you know whether it is contemplated that Atari Japan  
14 will assemble any video amusement machines for export?

15 A. They may if they so desire.

16 Q. Does Atari Inc. control whether or not Atari Japan exports  
17 to the United States? A. No.

18 Q. Is it contemplated in the formative stage of Atari Japan  
19 that Atari Inc. will control the export of video amusement  
20 machines from Atari Japan to the United States?

21 A. It has not been determined as yet.

22 Q. Does Atari, Inc. have any other wholly or partially owned  
23 subsidiaries? A. No.

24 Q. Does it control any other companies?

25 A. Excuse me, I would like to retract that last statement.

26 We control Kee Games, Inc.

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OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 Q. That is K-e-e? A. Yes.

2 Q. What is Kee Games, Inc.? A. A manufacturer  
3 of video amusement machines.

4 (Court recess.)

5 MR. ANDERSON: Q. Mr. Bushnell, I think just before the  
6 break you stated that Kee Games, Inc. was a manufacturer of  
7 video amusement games. Where is Kee Games, Inc. located?

8 A. They are located in Santa Clara.

9 Q. Do you hold any position with Key Games, Inc.?

10 A. No.

11 Q. What is the relationship between Kee Games, Inc. and Atari,  
12 Inc.?

A. Atari has an equity interest.

13 Q. Is it a controlling interest? A. Yes it is.

14 Q. Does Kee Games, Inc. manufacture a different product line  
15 than Atari, Inc.-- A. Yes.

16 Q. --or the same? A different? A. Yes.

17 (Off the record discussion.)

18 Q. Who are the principal officers of Kee Games, Inc.?

19 A. Joseph Keenan.

20 Q. K-e-e-n-a-n? A. Yes.

21 Q. Is he president? A. Yes.

22 Q. Who else? A. Bill White.

23 Q. W-h-i-t-e? A. Yes.

24 Q. What is his position? A. I think he is  
25 secretary. Steven Bristow.

26 Q. B-r-i-s-t-o-w? A. T-o-w and Gil Williams.

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SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0119

- 1 Q. What is Bristow's position? A. He is treasurer.
- 2 Q. And Williams? A. Director.
- 3 Q. Are any of these gentlemen officers or directors of Atari,  
4 Inc.? A. No.
- 5 Q. Are any of them employed by Atari, Inc.?
- 6 A. No.
- 7 Q. What product line does Kee Games, Inc. manufacture in the  
8 video amusement game field or amusement device field?
- 9 A. The Kee product line under the name Kee Games.
- 10 Q. Do they specify product names within the line?
- 11 A. Elimination, Formula K, Spike.
- 12 Q. Any others? A. That is it.
- 13 Q. Are any of these three games played in the same general  
14 manner as Pong? A. Not in the same general  
15 manner.
- 16 Q. Is there a movable playing element that moves back and  
17 forth across the screen? A. Yes.
- 18 Q. In which ones is that true? A. There is motion  
19 involved with all of the games.
- 20 Q. Are there players, two or more players in all these games?
- 21 A. No.
- 22 Q. In any of them? A. Yes.
- 23 Q. In which game? A. Elimination.
- 24 Q. How many players does Elimination have?
- 25 A. One to four.
- 26 Q. Is there a movable playing piece of some sort in Elimination?

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OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118



1 A. There is motion involved. I don't understand the question.

2 Q. A display which is moving in the course of playing the  
3 game? A. Yes.

4 Q. What do you call that thing which moves?

5 MR. HERBERT: I have to object. You are going substantially  
6 on the background but it seems to me we are getting a little  
7 more deeply into the construction, not only with our games but  
8 even Kee games, and my understanding of this deposition is that  
9 it is to be limited to the question of venue so far as Atari  
10 is concerned.

11 MR. ANDERSON: I think one question in venue is what pro-  
12 ducts are made and where they are made and where they are sold.

13 MR. HERBERT: As far as our motion for dismissal for lack  
14 of venue, the product line hasn't even been mentioned. The  
15 motion is based upon no business at all and no place of business  
16 at all in the northern district of Illinois.

17 MR. ANDERSON: I understand, you know, your affidavit I  
18 think and your contentions.

19 Q. What do you call the moving display in Elimination?

20 A. The moving display, there is a--we call it variously the  
21 paddle.

22 Q. How the paddle is manipulated by one of the players, is  
23 that right in Elimination? A. Yes.

24 Q. And is this manipulated in order to hit some other display?

25 A. Yes.

26 Q. What do you call that display which the paddle is intended

1 to hit? I'm just trying to get some nomenclature. We seem to  
2 be having trouble. A. Ball.

3 Q. And Elimination has a ball? A. It has a square.

4 Q. Would you call that square a ball?

5 A. Yes.

6 Q. Is it the object of the game that a player manipulates the  
7 paddle so that it will engage the ball and cause it to go to-  
8 ward the other player's end of the playing display?

9 A. Yes.

10 Q. And if the paddle impacts with the ball, does it change the  
11 direction of the ball? A. Yes.

12 Q. And if the paddle fails to hit the ball, does the ball go  
13 off the end and disappear? A. Yes.

14 Q. And does that score a point? A. No, it  
15 doesn't.

16 Q. What is the manifestation then of the ball going off of the  
17 field? A. It beeps.

18 Q. Is there any scoring involved in Elimination?

19 A. There is a tally which is eliminated.

20 Q. Are there upper and lower walls across the top and bottom  
21 of the display in Elimination? A. No.

22 Q. Are there any fixed barriers that cause the ball to change  
23 its direction in Elimination? A. Yes.

24 Q. Where are they located? A. In the corners.

25 Q. If the ball impacts on one of the barriers, does it change  
26 its direction? A. Yes.

1 Q. Does the description that you have just given generally  
2 describe the way in which Pong is also played?

3 A. No.

4 Q. How does it differ? A. I don't really under-  
5 stand the question. The essential differences of the game?

6 Q. Yes. A. One is a contest between  
7 two people only.

8 Q. That is Pong? A. Yes, and there are no  
9 provisions for four players.

10 Q. Any others? A. Let's say the paddles are  
11 arranged on four sides.

12 Q. In Elimination? A. Yes.

13 Q. Any others? A. No.

14 Q. Where does Kee Games Incorporated sell its products?

15 A. Throughout the United States and some into Europe.

16 Q. When was Kee Games, Inc. started? A. October of  
17 1973.

18 Q. Does Kee Games, Inc. place machines on the street?

19 A. No.

20 Q. Does it only sell products? A. Yes.

21 Q. Does it have any other products other than the three games  
22 that you mentioned: Elimination, Formula K and Spike?

23 A. There are small modifications but nothing that we consider  
24 to be new products.

25 Q. Does Kee Games, Inc. have a distributor organization of  
26 some sort? A. Yes.

- 1 Q. What is the nature of that organization?
- 2 A. I don't know.
- 3 Q. Does it have any employees outside of the San Jose area?
- 4 A. No.
- 5 Q. Does Kee Games, Inc. have a distributor in the Chicago area
- 6 that you know of? A. Yes.
- 7 Q. Who is that? A. Worldwide.
- 8 Q. Do you know the full name of the company?
- 9 A. No, I don't. I think it's Worldwide Distributors.
- 10 Q. Do you know where they are located?
- 11 A. No, I don't.
- 12 Q. When did Kee Games, Inc. first deal with Worldwide Distrib-
- 13 utors approximately? A. I don't know.
- 14 Q. Was it before the first of this year?
- 15 A. Yes.
- 16 Q. Has Kee Games, Inc. sold the game Elimination to Worldwide
- 17 Distributors? A. Yes.
- 18 Q. Has Kee Games sold the game Formula K to Worldwide Dis-
- 19 tributors? A. Yes.
- 20 Q. Has Kee Games, Inc. sold the game Spike to Worldwide Dis-
- 21 tributors? A. Yes.
- 22 Q. How long has Elimination been in the Kee Game product line
- 23 approximately? A. December I believe was
- 24 their shipment.
- 25 Q. Of Elimination? A. Of any game.
- 26 Q. Was Elimination the first game that Kee Games, Inc. made

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SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

- 1 and sold? A. Yes.
- 2 Q. When was the first Formula K game sold approximately to  
3 Worldwide Distributors? A. It probably would be April.  
4 I am not sure.
- 5 Q. Of 1974? A. Yes.
- 6 Q. Does Formula K involve paddles? A. No.
- 7 Q. Or a ball? A. No.
- 8 Q. Does it involve motion of some sort of a playing device or  
9 display? A. Yes.
- 10 Q. Do you by any chance have literature with you on any or all  
11 three of these games? A. No.
- 12 MR. ANDERSON: May we have some literature on these three  
13 games, Mr. Herbert?
- 14 MR. HERBERT: We have no--at least I have no control over  
15 Kee Games. They are not a party to this lawsuit. Do you have  
16 literature at Atari?
- 17 THE WITNESS: No.
- 18 MR. HERBERT: Atari does not.
- 19 MR. ANDERSON: It's a controlled corporation.
- 20 MR. HERBERT: It's also a separate corporation. The witness  
21 has already indicated he doesn't even know what the distributor-  
22 ship arrangements are.
- 23 MR. ANDERSON: Well, he knows who the distributor is, when  
24 the product was shipped. You are going to stand on the corpor-  
25 ate isolation that you are alleging?
- 26 MR. HERBERT: Oh, yes.

SOCRATES NICHOLSON

52 SECOND STREET

AND ASSOCIATES  
OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

(415) 362-0118

1 MR. ANDERSON: And will not provide us with printed dis-  
2 tributed, publicly available literature on that basis?

3 MR. HERBERT: If they have them at Atari I certainly will.  
4 If not I'm not going to Kee to get them, no.

5 MR. ANDERSON: Q. Describe the manner in which Formula K  
6 is played?

7 MR. HERBERT: I am going to object to this line of question-  
8 ing again, that it has nothing really to do with respect to the  
9 venue questions before the court and I will instruct the witness  
10 not to answer. All it is doing is extending the length of this  
11 deposition.

12 MR. ANDERSON: Again I will say the witness has testified  
13 it's a wholly owned--

14 MR. HERBERT: No.

15 MR. ANDERSON: It is a controlled subsidiary and I think we  
16 are entitled to interrogate this witness to the extent he has  
17 this knowledge about a controlled subsidiary. I think I have  
18 made a long trip to get a reasonable amount of very basic  
19 information.

20 MR. HERBERT: If and when you pass the venue hurdle, I think  
21 that is probably true but until you pass that hurdle I don't  
22 think that you are entitled to go into the workings of the  
23 games of Kee or even of Atari.

24 MR. ANDERSON: I'm not asking about the workings of the  
25 game. I'm asking what an operator sees and does and experiences  
26 in playing the game, just the outward manifestation of a game

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AND ASSOCIATES

52 SECOND STREET

OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

(415) 362-0118

1 which is made by a controlled subsidiary of Atari, Inc., a named  
2 defendant in this lawsuit.

3 MR. HERBERT: It has nothing to do with the venue question.  
4 The venue question at this point as far as I can see down the  
5 line has nothing to do with what is manufactured by Kee. It  
6 really has nothing to do with what is manufactured by Atari.  
7 We haven't even gotten into that. If and when we do we will get  
8 into whether or not Atari's machines or Kee's machines infringe  
9 any of the patents involved in the litigation.

10 MR. ANDERSON: And you are instructing the witness not to  
11 answer?

12 MR. HERBERT: I instruct the witness not to answer.

13 MR. ANDERSON: Well, we will certainly take appropriate  
14 steps, I hope not but perhaps to make another trip out here for  
15 that purpose at hopefully Atari's and Kee Games' expense because  
16 I think this is so clearly a thin corporate relationship that  
17 we are entitled to pierce or at least try to pierce that. We  
18 will certainly take the position you are violating the intent  
19 and the language of the Federal rules of civil procedure.

20 MR. HERBERT: You can try to pierce the corporate relation-  
21 ship to see whether Kee has a place of business in the northern  
22 district of Illinois, that is fine. You can attempt to do that.  
23 That is not what you are attempting to do with this line of  
24 questioning.

25 MR. ANDERSON: We have established that Kee Games are in  
26 the northern district of Illinois, they are sold there, delivered

1 there I presume. We will get into that further, that they have  
2 a distributor there and I think we are entitled to explore just  
3 how those games are used, what is done with them when they get  
4 there to the extent this witness knows and if we can't get it  
5 from this witness we will make another trip out here to get the  
6 information we are entitled to.

7 MR. HERBERT: You are entitled to pierce the corporate veil  
8 if you can. You have not even attempted to do that at this  
9 point. Until that veil is pierced the activities of Kee Games,  
10 not being a party to that suit have nothing to do with it.

11 MR. ANDERSON: Q. Mr. Bushnell, does Formula K involve  
12 moving a paddle?

13 MR. HERBERT: I instruct the witness not to answer.

14 MR. ANDERSON: Q. Will you answer the question?

15 A. No, I will not.

16 Q. Does the game Spike involve a moving paddle?

17 MR. HERBERT: I instruct the witness not to answer on the  
18 same grounds.

19 MR. ANDERSON: Q. Does the game Spike involve a ball?

20 MR. HERBERT: I instruct the witness not to answer on the  
21 same grounds.

22 MR. ANDERSON: Q. What is the percentage control which  
23 Atari, Inc. has in Kee Games Incorporated?

24 Off the record.

25 (Unreported discussion.)

26 THE WITNESS: Atari has in excess of 90 percent.



1 MR. ANDERSON: Q. That is 90 percent of the stock of Kee  
2 Games, Inc., is that correct?

3 A. That's correct.

4 Q. Who holds the remaining 10 percent?

5 A. Joseph Keenan.

6 Q. Was he ever employed by Atari, Inc.?

7 A. No, he was not.

8 Q. Was he ever employed by any other entity which Atari, Inc.  
9 owns or controls? A. No.

10 Q. Are there any other companies which Atari, Inc. controls?

11 A. Previously stated.

12 Q. Other than the ones we have covered already?

13 A. No.

14 Q. When was Atari, Inc. formed? A. Its incorporation  
15 date was June of 1972.

16 Q. Did it continue the business activities of some other  
17 entity? A. Yes, it did.

18 Q. What was that entity? A. Syzygy Company.

19 Q. Was it then Syzygy Game Company? A. No.

20 Q. It was then Syzygy Company? A. Yes.

21 Q. A proprietorship? A. A partnership.

22 Q. Who were the partners in Syzygy Company?

23 A. Myself and Mr. Ted Dabney.

24 Q. Did one of you control the company? A. Yes.

25 Q. Did you? A. Yes.

26 Q. At the time of the formation of Atari, Inc. did Syzygy have

1 a product line?

A. Yes.

2 Q. What was that product line?

3 A. Pong. Excuse  
4 me. At the time that is not true. Pong wasn't really intro-  
5 duced until later on. I guess I should say publication here.  
6 Off the record.

6 (Unreported discussion.)

7 MR. HERBERT: Back on the record.

8 THE WITNESS: What do you mean by do you have a product  
9 line?

10 MR. ANDERSON: Q. Did syzygy have any product that it was  
11 making and selling as of June 1972?

12 A. No.

13 Q. Did Syzygy Company at any time in its history sell a pro-  
14 duct?

15 A. What do you mean by product?  
16 We were operating amusement machines which we had purchased.

17 Q. As of June 1972 was Syzygy operating amusement machines  
18 which it had purchased?

A. Yes.

19 Q. Was Syzygy Company in June of 1972 operating any video  
20 amusement machines?

A. Yes.

21 Q. Was that portion of the business of operating video amuse-  
22 ment machines transferred in some way to Atari, Inc. in June  
23 of 1972?

A. Yes, it was.

24 Q. Was the entire active business of Syzygy, Inc. transferred  
25 to Atari, Inc. at that time?

A. Yes, Syzygy Co.

26 Q. Excuse me, Syzygy Co. I am sorry. Did Syzygy Co. at that  
time continue to have an operating business?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 A. No, it didn't. It turned into a DBA.

2 Q. And DBA is for-- A. Doing business as.

3 Q. I'm not sure I understand that. Who was doing business as  
4 what?

5 A. Atari was doing business as  
6 Syzygy.

7 Q. Syzygy became more or less just a name that Atari used, is  
8 that correct?

9 A. That's correct.

10 Q. In June of 1972, whose video amusement machines was Syzygy  
11 operating?

12 A. A game called Computer Space  
13 built by Nutting Associates.

14 Q. Did Atari, Inc. continue to operate video amusement machines  
15 after June of 1972?

16 A. Yes.

17 Q. Is Atari, Inc. operating video machines today?

18 A. Yes.

19 Q. At some point in time did Atari, Inc. operate any other  
20 games other than Computer Space?

21 A. Yes.

22 Q. What other games has Atari, Inc. operated?

23 A. Pong, Space Race, Gotcha, Grantrak, Rebound, Quadrapong.

24 Q. Any others? A. World Cup, Super Pong,  
25 Pong Doubles, Color Gotcha.

26 Q. Is that the list as far as you know at the present time?

27 A. Yes.

28 Q. Of those which if any is Atari, Inc. not at the present  
29 time operating?

30 A. Color Gotcha--no, that is  
31 not true, I will take that back. All of them.

32 Q. By operating, do you mean street operation?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 A. That's correct.

2 Q. Is there any separate entity of Atari, Inc. or a division  
3 which handles the street operation?

4 A. NO.

5 MR. HERBERT: Before we go on I think the answer might be  
6 misleading. The question was which of these is Atari not  
7 operating and your answer was all of them.

8 MR. ANDERSON: Q. None of them? That is correct?

9 A. None of them.

10 Q. That is the way I understood your answer. Has Atari, Inc.  
11 operated any video games outside of the State of California?

12 A. Yes.

13 Q. Where outside of the State of California?

14 A. Salt Lake City, Hawaii, Tokyo, Guam. That is it.

15 Q. Within the State of California does Atari, Inc. operate  
16 games throughout the State or only in a limited geographical  
17 area? A. A limited geographical area.

18 Q. Just generally what is the limited area?

19 A. Santa Clara Valley.

20 Q. At any time in the history of Atari, Inc. has it operated  
21 video games in areas other than those that you have listed:  
22 Salt Lake City, Hawaii, Tokyo, Guam and the Santa Clara Valley?

23 A. Clarify what you mean by "operate"?

24 Q. Street operation of any kind. A. Define that?

25 Q. Well, it's a term that I found somewhere in your material,  
26 I think. Does street operation have a meaning to you?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 A. Well, yes, it means placing on location and collecting  
2 the revenues therefor. That is what I mean by street operation.

3 Q. I then would ask you the question using that definition  
4 of street operation.

5 A. Could you repeat the ques-  
tion again?

6 Q. Yes. Has Atari, Inc. at any time in its history operated  
7 in a street operation outside of the areas that you have listed,  
8 namely, Salt Lake City, Hawaii, Tokyo, Guam and the Santa Clara  
9 Valley?

10 A. No, we haven't. Excuse me.  
11 I will take that back. We have operated machines in Los  
Angeles which we sold.

12 Q. You have since sold?

A. Yes.

13 Q. Has Atari, Inc. at any time operated machines outside of  
14 the geographical areas you have just listed on a more limited  
15 basis than the operation which you described, total control,  
16 maintenance and so forth? In other words, have you placed  
17 any anywhere else in the United States where Atari, Inc.  
18 maintained ownership of it for some more or greater or lesser  
19 amount of time and perhaps received any coins that were placed  
20 in it?

A. No.

21 Q. With respect to the operation of Syzygy prior to June of  
22 1972, did it operate in all of the areas that you have listed  
23 in street operations?

A. No.

24 Q. What areas did it operate in?  
25 Santa Clara Valley.

A. Just the

26 Q. Did Syzygy, Inc. operate any game other than the one that

1 you have mentioned made by Nutting Associates named Computer  
2 Space---I said Syzygy, Inc., I mean Syzygy Co.--prior to June  
3 of 1972? A. We operated other amuse-

4 ment machines purchased by various Chicago and Florida manu-  
5 facturers that were nonvideo.

6 Q. Syzygy Co. purchased other amusement machines, nonvideo  
7 games, from other sources. Did this include Allied Leisure?

8 A. Yes.

9 Q. And what Chicago company? Midway?

10 A. They were all purchased in San Francisco.

11 Q. Whose Chicago machines did you purchase in San Francisco?

12 A. Oh, Midway, Gottlieb, Chicago Coin, Williams. We were in  
13 the operating business.

14 Q. Is the game Computer Space or is the video amusement  
15 machine Computer Space a paddle game? A. No.

16 Q. Does it have a moving playing piece? A. Yes.

17 Q. Is it a ball? A. No.

18 Q. Can you just generally describe the game, Computer Space?

19 A. It's a rocket ship-flying saucer fight. The computer  
20 controlled flying saucer battles with a player controlled  
21 rocket ship.

22 MR. ANDERSON: I will have the reporter mark as Bushnell  
23 deposition Exhibit 1 a Notice of Taking Deposition.

(Notice of Taking Deposition  
marked Bushnell deposition  
Exhibit No. 1 for identification)

24  
25  
26 MR. ANDERSON: Q. And I hand you Exhibit 1, Mr. Bushnell,

1 and ask you if you have seen that before or a copy of it?

2 A. Yes, I have.

3 MR. HERBERT: What is it? Can you identify it?

4 MR. ANDERSON: The Notice. Bushnell deposition Exhibit 1  
5 is directed to defendant Atari, Inc. and has listed certain  
6 categories in which the defendant has been requested to pro-  
7 duce documents.

8 Q. Have you caused a search to be made for documents responding  
9 to those categories? A. Yes, I have.

10 Q. Have you produced any documents here today in response to  
11 that Notice?

12 MR. HERBERT: I might interject here with respect to  
13 Paragraph No. 1, the only documents located are documents  
14 which have already been produced in Chicago, the contracts.  
15 I have other copies but I am not going to add anything to it.  
16 They are the same as Britz' deposition Exhibit 3, Britz'  
17 deposition Exhibit No. 2 and Ross deposition Exhibition No.2.

18 MR. ANDERSON: May I see them?

19 MR. HERBERT: I didn't even bring them in here. I have  
20 the---yes, I will get them.

21 (Short recess.)

22 MR. HERBERT: I was mistaken, I do not have the letter  
23 on Syzygy letterhead which is Britz deposition Exhibit No. 2,  
24 and in addition to that the contracts between Bally and Mr.  
25 Bushnell are not fully executed as were the agreements actually  
26 presented in Chicago.

1 MR. ANDERSON: Does Mr. Bushnell or Atari have fully  
2 executed documents?

3 MR. HERBERT: No, that we can locate.

4 MR. ANDERSON: Then what you have handed me are the best  
5 documents in the records of Atari, Inc. at the present time?

6 MR. HERBERT: That is all we can locate.

7 MR. ANDERSON: I will have the reporter mark as Bushnell  
8 deposition Exhibit 2 a stapled collection of documents which  
9 Mr. Herbert has handed me. The top page is marked "Royalty  
10 Agreement", it is two pages of Xeroxed material. It bears  
11 a date 26 day of June 1972, followed by an Affidavit form  
12 bearing the date 1st of June 1971, a second Affidavit form  
13 bearing the date of June 1972 and a second two page Royalty  
14 Agreement or document so labeled between Bally Manufacturing  
15 Corporation and Syzygy Co., the first one I notice between  
16 Bally Manufacturing Corporation and Nolan Bushnell.

17 (Group of documents being  
18 Royalty Agreements and Affi-  
19 davits marked Bushnell deposi-  
tion Exhibit No. 2 for identi-  
fication.)

20 MR. ANDERSON: Q. Mr. Bushnell, I hand you Bushnell  
21 deposition Exhibit 2 and ask--

22 Would you like to see it?

23 MR. WELSH: Yes, please.

24 MR. ANDERSON: Q. Mr. Bushnell I hand you Bushnell  
25 deposition Exhibit 2 which you heard me briefly describe on  
26 the record and ask you whether you are familiar with those

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118



- 1 documents? A. Yes, I am.
- 2 Q. Did they come from any files which you maintain?
- 3 A. Yes, they did.
- 4 Q. What file did they come from? A. It came from what  
5 I call essentially the Bally file.
- 6 Q. Is that a file that is maintained at the offices of Atari,  
7 Inc.?
- 8 A. Yes, it is.
- 9 Q. Did you find in your search any other copies of the docu-  
10 ments which are stapled together as Bushnell deposition  
11 Exhibit 2?
- 12 A. Yes, we have a copy of  
13 this document.
- 14 Q. You have another copy of the document?
- 15 A. Yes.
- 16 Q. Do you have any originals or non-Xeroxed copies of the  
17 documents that you know of? A. No, I don't  
18 believe I do.
- 19 Q. Do you have any copies of any of the documents which form  
20 a part of Bushnell deposition Exhibit 2 which bear actual  
21 signatures? A. Not to my knowledge. This  
22 is the most complete form.
- 23 Q. Do you know who prepared the first document, the first two  
24 pages of Bushnell deposition Exhibit 2?
- 25 A. No.
- 26 Q. Was it prepared in California or in Chicago?
- A. Chicago.
- Q. How did it come into your possession?

1 A. It was given to me by Mr. Britz.

2 Q. Was that while you and he were together?

3 A. Yes.

4 Q. Where were you at that time? A. I don't remember.

5 Q. Were you in Chicago at the time? A. I am not  
6 sure whether I received it in the mail or whether it was  
7 handed to me in Chicago.

8 Q. Did you ever have any correspondence with anyone at Bally  
9 or Midway with respect to this subject matter?

10 A. I don't remember.

11 Q. Have you made a search for such correspondence?

12 A. Yes, I have.

13 Q. Have you been able to find any? A. Only those  
14 things which are presented here.

15 Q. Are there any other documents, Mr. Herbert, that you are  
16 producing in response to our request?

17 MR. HERBERT: No. We had no other documents we consider  
18 to be in response to the request in the Notice but in view of  
19 the long discussion of our invoices in Chicago we did bring  
20 invoices. I don't think they respond to any paragraph here  
21 but we do have invoices to Empire Distributing.

22 Q. All right. Perhaps we will just take those and mark them  
23 at this time or look at them and come back to them later.

24 MR. HERBERT: Insofar as marking and making of record,  
25 there are a fair number of them and they are invoices giving  
26 pricing information as well as the volume of business between

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 Atari and Empire which may or may not be relevant here. I am  
2 perfectly glad to let you take a look at them. If you think  
3 any pertinent ones of them need to be marked as exhibits  
4 perhaps we can delete some portions that are not necessary  
5 for your purposes..

6 MR. ANDERSON: All right.

7 MR. HERBERT: But I prefer not to have them marked as  
8 exhibits at this time and let you take a look at them at your  
9 leisure, perhaps in a short recess.

10 MR. ANDERSON: All right. Why don't you lay them aside?  
11 We will look at them in a short recess and pursue the Royalty  
12 Agreement which is the first two pages of Bushnell deposition  
13 Exhibit 2.

14 Q. Mr. Bushnell, do you recall whether you signed the original  
15 of the Royalty Agreement which forms the first two pages of  
16 Exhibit 2? A. Yes, I believe I did.

17 Q. I will show you Ross deposition Exhibit 3 and ask you if  
18 you recognize that? A. Yes, I do.

19 Q. And is that another copy of the Royalty Agreement which  
20 is the first two pages of Bushnell Exhibit 2?

21 A. It appears to be so.

22 Q. And does it bear your signature? A. Yes, it  
23 does.

24 Q. Did you sign it on or about the 26th of June 1972?

25 A. I don't know. I believe that I did.

26 Q. The third page of Bushnell deposition Exhibit 2 is a form,

1 unsigned, entitled "Affidavit" and it states in part "I,  
2 Nolan Bushnell, of ( ) hereby state and  
3 affirm that as of the 1st of June 1971 I no longer had any  
4 obligatory duties to Nutting and Associates" and it goes on.  
5 Do you recall having seen that affidavit before?

6 A. Yes, I have.

7 Q. Do you know who prepared it? A. Bally Corporation.

8 Q. Did you provide them with the information for its prepara-  
9 tion? A. No, I didn't.

2 10 Q. Do you know, did they ever give you any reason why they  
11 prepared it? A. They felt that there might be  
12 some kind of a conflict because I was previously in the employ  
13 of Nutting, and there was a document signed with Nutting with  
14 regard to certain things, certain tasks, that I would perform  
15 there, and they were concerned since they were in competitive  
16 areas that there may be some cause for legal action.

17 Q. Do you know if you signed the form Affidavit which com-  
18 prises the third page of Bushnell deposition Exhibit 2?

19 A. Yes.

20 MR. HERBERT: I would like to point out to the witness  
21 the third page of Exhibit 2 looks very similar to the fourth  
22 page of Britz deposition Exhibit No. 3 and request that the  
23 witness look at it more closely rather than upside down as he  
24 is doing now.

25 MR. ANDERSON: That is an excellent suggestion. I might  
26 say I'm not trying to create an erroneous record, I only want

SOCRATES NICHOLSON  
AND ASSOCIATES

52 SECOND STREET

OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

(415) 362-0118

1 to get the facts.

2 THE WITNESS: Yes.

3 MR. ANDERSON: Q. You will note the third page bears a  
4 date of June 1971 I believe, and the fourth page--

5 MR. WELSH: 1st of June.

6 THE WITNESS: Okay.

7 MR. ANDERSON: --is dated June of '72.

8 THE WITNESS: This is the one I signed.

9 MR. HERBERT: The witness is referring to the one marked  
10 Britz deposition Exhibit No. 3.

11 MR. ANDERSON: Q. And that is the fourth page of the set  
12 of documents I have had the reporter mark as Bushnell deposi-  
13 tion Exhibit 2, is that correct? A. Yes.

14 Q. Did Bally also prepare the Affidavit which you actually  
15 signed, do you know? A. I don't remember. I believe  
16 they did.

17 Q. Do you now recall the reason that new affidavits were  
18 prepared? A. I think there were several  
19 typographical errors in the first one and they were incomplete  
20 in some areas.

21 Q. Was the first merely a draft of the second as they appear  
22 in deposition Exhibit 2? A. I'm not sure. I don't  
23 remember the events that clearly.

24 MR. ANDERSON: Mr. Herbert, are there any other documents  
25 that are being produced in response to the Notice?

26 MR. HERBERT: No. There is nothing else.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 MR. ANDERSON: Q. Mr. Bushnell, how old are you?

2 A. I am 31.

3 Q. Would you briefly state your educational background after  
4 high school? A. I went to Utah State University

5 and later on continued at the University of Utah where I  
6 received a bachelor's degree in electrical engineering with  
7 an emphasis on computer design.

8 Q. In what year did you receive your degree?

9 A. 1968.

10 Q. Did you continue your education beyond that degree in  
11 1968 or did you enter business? A. I entered busi-

12 ness.

13 Q. For whom did you go to work at that time?

14 A. Ampex Corporation.

15 Q. Located where? A. In Sunnyvale, California.

16 Q. Just in general what were your duties?

17 A. I was in computer design, digital recording involved in  
18 an information, storage and retrieval system.

19 Q. How long did you stay with Ampex? A. Two years.

20 Q. So you left then about 1970? A. That's correct.

21 Q. For whom did you become employed in 1970?

22 A. Nutting Associates.

23 Q. Where was Nutting located? A. Mountain View,  
24 California.

25 Q. What was the nature of Nutting's business in 1970?

26 A. They were an amusement game manufacturer.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

4151 352-0118

1 Q. At that time did they have a video amusement game that  
2 they were making and selling? A. No.

3 Q. Just generally what was the nature of their amusement  
4 games at that time? A. It was a question and  
5 answer game using film storage techniques.

6 Q. What were your duties when you joined Nutting?

7 A. As chief engineer.

8 Q. Approximately how many employees did Nutting have at that  
9 time? A. 20.

10 Q. For how long did you stay at Nutting?

11 A. One year.

12 Q. So that you left in about 1971? A. Yes.

13 Q. At the time that you left Nutting, did Nutting have a  
14 video amusement device that they were making and selling?

15 A. Yes.

16 Q. When in 1971 did you leave? A. It was actually  
17 in June--it was in February I believe of '72 actually.

18 Q. Did Nutting have more than one video game on the market  
19 that they were making and selling at that time in February of  
20 1972? A. No, they did not.

21 Q. What was the game? A. Computer Space.

22 Q. On approximately what date was Computer Space first made  
23 and sold by Nutting as far as you can recall?

24 A. I believe that the first unit was sold in late December  
25 or early January of 1972.

26 Q. Were you involved in the design of the game Computer

1 Space or the machine Computer Space?

A. Yes, I was.

2 Q. What was your involvement?

A. The machine was  
3 designed by me independently and offered to Nutting Associates  
4 on a royalty basis.

5 Q. Was it designed by you independently while you were an  
6 employee of Nutting?

A. No.

7 Q. Was it designed prior to your employment by Nutting?

8 A. Yes, it was.

9 Q. Is there some other agreement between you and Nutting with  
10 respect to a royalty basis for amusement games at this time?

11 A. Yes there is.

12 MR. ANDERSON: I will have the reporter mark as Bushnell  
13 deposition Exhibit 3 a copy of United States patent 3,793,483.

(Copy of United States patent  
3,793,483 marked Bushnell  
15 deposition Exhibit No. 3 for  
16 identification.)

17 MR. ANDERSON: Q. Mr. Bushnell, I hand you Bushnell  
18 deposition Exhibit 3 and ask you if you are the Nolan K. Bush-  
19 nell named in that patent?

A. I am.

20 Q. Is that a patent which you own?

A. It's current-  
21 ly assigned to Atari, Inc.

22 Q. Based on the disclosure of that patent, does that relate  
23 to the subject matter of the work that you did while you were  
24 at Nutting?

A. No. Well, it represents  
the subject matter which I did prior to working for Nutting.

25 Q. You testified that you had independently developed the  
26

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118



1 game Computer Space before you joined Nutting I believe?

2 A. That's correct.

3 Q. And is that the subject matter to the best of your knowledge

4 of your Patent 3,793,483? A. I don't quite under-  
5 stand.

6 MR. HERBERT: I am going to object to this. We are getting  
7 again quite far afield from the venue question and I don't  
8 see the connection to the venue question. Perhaps there is one  
9 in your mind but unless there is I am going to instruct the  
10 witness--I do instruct the witness not to answer.

11 MR. ANDERSON: Q. Patent 3,793,483 relates to video  
12 amusement machines, does it not? A. Yes it does.

13 Q. Does Atari, Inc. have any licensees under Patent 3,793,483?

14 A. Yes.

15 Q. Is Nutting Associates a licensee? A. Only in that  
16 they have a right to manufacture or had a right I should say  
17 under the terms of a contract to build that particular machine  
18 which has now expired.

19 Q. When you say that particular machine, you mean the machine  
20 Computer Space which you developed? A. Yes.

21 Q. Is Nutting no longer making the game or the machine  
22 Computer Space to the best of your knowledge?

23 A. I don't know. I don't believe they are.

24 Q. Are there any other licensees under your Patent 3,793,483.  
25 Bushnell deposition Exhibit 3?

26 MR. HERBERT: I object to the question and instruct the

SOCRATES NICHOLSON  
AND ASSOCIATES

52 SECOND STREET

OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

(415) 362-0118

1 witness not to answer on the ground that it has nothing to do  
2 with the venue question.

3 MR. ANDERSON: Well, I disagree that it has nothing to do  
4 with the venue question. I think that we perhaps can get  
5 back to it though at a later point. We may find it more  
6 acceptable, I don't know.

7 MR. RIDDELL: Would it be improper to ask you to connect  
8 that up right now as to where that is going?

9 MR. ANDERSON: All right, I will certainly at least do that  
10 in part for you, Mr. Riddell.

11 MR. RIDDELL: With regard to the venue question.

12 MR. ANDERSON: Q. Mr. Bushnell, what if anything did you  
13 do in response to or subsequent to the royalty agreement of  
14 June 26 1972, Bushnell deposition Exhibit 2?

15 A. I produced a video amusement machine and a four player  
16 flipper type pinball machine.

17 Q. Did they have names? A. The video amusement  
18 game had no name at that time nor did the pinball.

19 Q. Were they subsequently named, do you know?

20 A. The machine--when you say subsequent to, it should be  
21 clarified. I had in my possession at the time of the execution  
22 of this contract the architecture of several games including  
23 a flipper type pinball machine, including several video  
24 amusement games. The Royalty Agreement here referred not to  
25 any particular video amusement machine nor to any particular  
26 pinball machine.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 MR. ANDERSON: Q. You stated that you did develop or had  
2 developed two amusement machines under--

3 A. Several.

4 Q. Well, you mentioned two, a video amusement machine I think  
5 and a four player flipper game, at least that is what my notes  
6 say and I think where we were I asked whether those had names,  
7 you said they didn't at the time that you delivered them to  
8 Bally. I asked if they were named subsequently and what is  
9 the answer to that question if you know?

10 A. There was a machine named, that was subsequently named  
11 Pong represented to Bally.

12 Q. And was that the video amusement machine that you referred  
13 to as one of the machines delivered to Bally under the pro-  
14 visions of P.X. 2? A. Yes.

15 Q. Did you develop any other video amusement machines which  
16 you delivered to Bally or Midway? A. Yes I did.

17 Q. How many? A. There were two.

18 Q. Two additional ones beyond Pong? A. No, one.

19 Q. One additional one. Was it delivered to Bally or to  
20 Midway? A. To Midway.

21 Q. Was it done pursuant to the Royalty Agreement, the first  
22 two pages of Bushnell deposition Exhibit 2?

23 A. Yes, it was.

24 Q. Why did you deliver that game to Midway when you were  
25 under agreement with Bally? A. I was instructed  
26 to do so.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

- 1 Q. By whom? A. By Bally.
- 2 Q. Who at Bally instructed you, do you know?
- 3 A. Mr. Britz.
- 4 Q. On what occasion did he instruct you to do that?
- 5 A. Upon the occasion when I presented the second game to them.
- 6 Q. Did you present that to them in person?
- 7 A. Yes I did.
- 8 Q. In the Chicago area? A. Yes I did.
- 9 Q. Where did you do that? A. At their corporate
- 10 offices.
- 11 Q. At Bally's corporate offices? A. At Midway's
- 12 corporate offices.
- 13 Q. Is that in Schiller Park, Illinois, do you know?
- 14 A. Yes it is.
- 15 Q. What was the name of that game if it had a name at that
- 16 time? A. It was called VP-2 or
- 17 Astroid as it was later.
- 18 Q. Did VP-2 or Astroid precede Pong in your development or
- 19 was it subsequent? A. When you say--would you
- 20 elaborate on development?
- 21 Q. Well, perhaps we should establish which one you delivered
- 22 to Midway or Bally first. A. Pong.
- 23 Q. Approximately when did you deliver Pong to Bally or Midway,
- 24 if you know? A. It was in middle summer
- 25 of '72.
- 26 Q. When did you deliver Astroid or VP-2 to Bally or Midway?

1 A. It was sometime later than that. I think it was in early  
2 1973.

3 Q. Did you deliver Pong to Bally or to Midway?

4 A. To Bally.

5 Q. But you delivered Astroid to Midway? A. Yes.

6 Q. I will show you a document that has previously been marked  
7 as Britz deposition Exhibit 2 and ask you if you recognize that?

8 A. What was the question again?

9 Q. Whether you recognize the letter? A. Yes I do.

10 Q. Does it bear your signature? A. Yes it does.

11 Q. Did you write it on about the date it bears?

12 A. I must have, yes.

13 Q. Does that refresh your recollection at all with respect to  
14 when you delivered the first Pong game to Bally?

15 A. Yes it was--I think it was prior to the date called for  
16 here but I think it was in the early fall.

17 Q. So that was subsequent to July 10 1972, the date of Britz  
18 deposition Exhibit 2? A. Yes it was.

19 Q. But prior to November 15 you believe?

20 A. Yes.

21 Q. Did you attend the MOA Show in Chicago in 1972?

22 A. Yes I did.

23 Q. Did you or any company that you controlled have a display  
24 at that show? A. No we did not.

25 Q. Did you show a machine of any kind during that show while  
26 in conjunction with that show? A. No I did not.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 Q. Upon your being in Chicago for the show, is that the occasion  
2 on which you delivered the Pong game to Bally, do you know?

3 A. I believe that the delivery of the Pong game to Bally--no,  
4 I would say no, that was not the occasion.

5 Q. So in the fall of '72 then you made at least two trips to  
6 Chicago? A. Yes I did.

7 Q. How many trips did you make to Chicago during 1972 to the  
8 best of your recollection? A. During the whole year  
9 1972 I would say four.

10 Q. When was the first trip to Chicago in 1972?

11 A. It was in early spring.

12 Q. What was the occasion for that trip? A. As an  
13 employee of Nutting Associates.

14 Q. And who did you visit if anyone in the Chicago area at that  
15 time? A. Empire Distributing.

16 Q. Was Empire Distributing a distributor for Nutting at that  
17 time? A. Yes they were.

18 Q. What was the purpose of your calling on Empire at that time?

19 A. To teach a field service school.

20 Q. Prior to that visit to Empire in 1972 in the spring, had  
21 you made any prior trips to Chicago on behalf of Nutting?

22 A. Yes I did. It was to the MOA Show.

23 Q. In 1971? A. Yes.

24 Q. Did Nutting have a booth at the 1971 MOA Show?

25 A. Yes.

26 Q. Had you made any other trips to Chicago on behalf of Nutting

SOCRATES NICHOLSON  
AND ASSOCIATES

52 SECOND STREET

OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

(415) 362-0118

1 prior to your trip in the spring of 1972?

A. No.

2 Q. Did Nutting have the machine Computer Space on display at  
3 the 1971 MOA Show as a part of their booth?

4 A. Yes they did.

5 Q. Who else from Nutting was at the MOA Show in 1971?

6 A. Bill Nutting, David Ralston, Rod Guyman.

7 Q. After your trip to Empire in the spring of '72 what was the  
8 next occasion of your traveling to Illinois?

9 A. It was to obtain a consulting arrangement with Bally Manu-  
10 facturing.

11 Q. To the best of your recollection on what date did you make  
12 that trip?

13 A. I think it was somewhere  
around March or April of that year.

14 Q. At that time were you no longer in the employ of Nutting?

15 A. Yes I was no longer.

16 Q. Did Syzygy Company then exist?

A. Yes it did.

17 Q. You mentioned earlier that you think there was an earlier  
18 corporation called Syzygy Games?

19 A. No, that was  
later.

20 Q. That came later?

21 A. The chronology, just to  
set the record straight, is Syzygy was rolled into Atari, Syzygy  
22 became the operating arm of Atari, Ted Dabney who was my partner  
23 purchased the assets of Syzygy and operated it independently  
24 and at a later time I reacquired the assets of Syzygy personally  
25 so that is the whole--during the time that Dabney ran it in-  
26 dependently it was called Syzygy Game Company.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

- 1 Q. I see. That would have been after June of '72?
- 2 A. That's correct.
- 3 Q. As of March of 1972 you and Mr. Babney were partners in
- 4 Syzygy Company? A. That's correct.
- 5 Q. And as I understand it there were no other partners at that
- 6 time? A. That's correct.
- 7 Q. Did Syzygy have any other employees?
- 8 A. No they did not.
- 9 Q. Did it have a manufacturing facility?
- 10 A. No it did not.
- 11 Q. Did it have a laboratory or development facility?
- 12 A. Yes it did.
- 13 Q. Upon your visit to Chicago in March or April of '72 who
- 14 did you call on at Bally? A. John Britz.
- 15 Q. Did you meet with anyone else at Bally at that time?
- 16 A. I don't recollect.
- 17 Q. Did you meet with any other companies or individuals with
- 18 respect to Syzygy business at that time?
- 19 A. I also met with Empire.
- 20 Q. With whom did you meet at Empire? A. Mr. Kitt.
- 21 Q. What was the purpose of your meeting in Chicago with Mr.
- 22 Kitt in March or April of '72? A. We were friends.
- 23 Q. Was there any business purpose? A. Only the intro-
- 24 duction to Bally.
- 25 Q. Did you have a video game with you during your trip in
- 26 March or April of 1972? A. Explain yourself

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118



1 more?

2 Q. Did you have a physical device which operated as a video  
3 machine? A. No I did not.

4 Q. Had you developed a video game other than the Computer Space  
5 as of March or April 1972? A. Yes I had.

6 Q. Was that the game that became Pong?

7 A. Yes it was.

8 Q. Did you provide Empire or Bally with any written material  
9 with respect to the video game that became Pong during that  
10 visit? A. Not to my recollection.

11 Q. Did you enter into any sort of a business relationship with  
12 Bally or Midway or Empire at or during that trip?

13 A. Which trip is that?

14 Q. March or April 1972. A. Yes.

15 Q. What was that business relationship?

16 A. It was covered--it's in the essence of this contract which  
17 is labeled plaintiffs' Exhibit 2. I mean that was the outcome  
18 document of those discussions.

19 Q. Then that would be actually Bushnell deposition Exhibit 2,  
20 the one with the yellow label? A. Yes.

21 Q. How do you relate that with the July 10 1972 letter on the  
22 Syzygy letterhead which is Britz deposition Exhibit 2?

23 A. Now this was in response to receiving the contract.

24 Q. Then you received Bushnell deposition Exhibit 2, the pro-  
25 posed Royalty Agreement prior to your letter of July  
26 10 1972? A. To the best of my knowledge.

SOCRATES NICHOLSON

AND ASSOCIATES  
OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 yes.

2 MR. WELSH: I think your records are a little bit confused  
3 in that Bushnell Exhibit 2 contains more documents than just  
4 that particular agreement.

5 MR. ANDERSON: Your point is probably well taken. I was  
6 referring to the first two pages.

7 THE WITNESS: Yes, so was I.

8 MR. ANDERSON: Q. Then perhaps we can clarify that by just  
9 merely referring to Ross deposition Exhibit 3 which is the same  
10 Royalty Agreement but the one you said bears your signature?

11 A. Yes.

12 Q. If I understand it then at the termination of your meeting  
13 with Mr. Britz in March or April of '72 did you believe you had  
14 an understanding with Bally? A. Yes I did.

15 Q. And it was just a matter of reducing it to writing later,  
16 is that correct? A. Right.

17 Q. And as far as you understand it, Ross deposition Exhibit 3  
18 was that reduction to writing? A. That's correct.

19 Q. And the letter of July 10 that you wrote, Britz deposition  
20 Exhibit 2, was merely a followup on Ross deposition Exhibit 3?

21 A. Yes.

22 Q. For what purpose? A. Oh I needed several  
23 parts that we had agreed on that I had not received. It was a  
24 situation that I had been purposely vague in describing the  
25 product that I was going to produce for them, and upon receiving  
26 the documents and the money I was able to tell them a little

1 bit more about the game which I was going to produce for them.

2 Q. What was the occasion of your next visit to Chicago after  
3 the March or April visit in 1972? A. To show them

4 a video game.

5 Q. When was that? Was that the one that you have referred to?

6 A. Yes that was the, you know, late summer, midsummer.

7 Q. At that time you had a game that was ultimately called Pong  
8 with you? A. Yes I did.

9 Q. At the time of that trip I gather Atari, Incorporated had  
10 been formed? A. Yes that is true.

11 Q. During that trip were you functioning on behalf of Atari,  
12 Incorporated? A. Yes I was.

13 Q. Was the agreement between Nolan Bushnell and Bally Manu-  
14 facturing Corporation, Ross Deposition Exhibit 3, transferred  
15 over to Atari, Inc.? A. In effect it was. I  
16 don't remember if there is any supporting documentation to that  
17 effect. No, there was.

18 Q. There was supporting documentation?

19 A. Yes.

20 MR. ANDERSON: Mr. Herbert--

21 MR. HERBERT: I don't know what it is. I have not seen it  
22 that I can recall.

23 THE WITNESS: I can remember signing something for the  
24 auditors.

25 MR. ANDERSON: Would you be good enough, Mr. Herbert, to  
26 find this supporting documentation?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 MR. HERBERT: As I understand it it's a paper you signed  
2 for the auditors?

3 THE WITNESS: Yes, it was just an internal memorandum that  
4 the auditors like so as to have the ends tied up.

5 MR. ANDERSON: Q. Ross deposition Exhibit 3 calls for  
6 monthly payments of four thousand dollars for a period of six  
7 months in paragraph 2 under consideration--excuse me, paragraph  
8 1 under consideration. Were those sums paid, do you know?

9 A. Yes they were.

10 Q. To whom were they paid?

A. To Nolan Bushnell.

11 Q. And did Nolan Bushnell transfer them to Atari, Inc.?

12 A. Yes I did.

13 Q. Was that true of all of the six payments, do you know?

14 A. Yes.

15 Q. Did Bally ever accept a game that you submitted to them  
16 pursuant to the Royalty Agreement, Ross deposition Exhibit 3?

17 A. Yes they did.

18 Q. What game did they accept or games?

A. It was the

19 Astroid game.

20 Q. Did they make and sell the Astroid game, do you know?

21 A. Yes they did.

22 MR. WELSH: You may want to clarify here whether he means  
23 Bally or some subsidiary of Bally.

24 THE WITNESS: Midway did.

25 MR. WELSH: You asked the question Bally and he answered  
26 yes.

1 MR. ANDERSON: Q. Do you know whether it was in fact Bally  
2 that made Astroid or-- A. Bally did not make  
3 Astroid.

4 Q. I gather from what you said Midway did make Astroid?

5 A. Yes.

6 Q. So that when you answered my question with respect to Bally  
7 you were either thinking of or referring to Midway?

8 A. That's correct.

9 Q. When Bally accepted and made Astroid and sold it, or Midway,  
10 did Midway at any time report to you with respect to the manu-  
11 facture of Astroid? A. No.

12 Q. Did Bally or Midway at any time report to you any sales of  
13 games which they accepted from you pursuant to Paragraph 2 at  
14 the bottom of the first page of Ross deposition Exhibit 3?

15 A. No.

16 Q. Did you or Atari call upon Bally or Midway to report with  
17 respect to games which they accepted and sold pursuant to the  
18 Royalty Agreement, Ross deposition Exhibit 3?

19 A. No.

20 Q. You have testified that they did accept a game that you  
21 made and sell it. Was there some reason that Atari did not  
22 call upon Midway or Bally to report pursuant to Paragraph 2  
23 at the bottom of the first page of Ross deposition Exhibit 3?

24 MR. WELSH: So the record is clear who do you mean by "they"  
25 in the beginning part of your question?

26 MR. ANDERSON: By "they" I mean Midway or Bally.

1 THE WITNESS: Yes.

2 MR. ANDERSON: Now my question is--I guess you better read  
3 the whole question and just think Midway or Bally when I said  
4 "they".

5 (Pending question read by reporter.)

6 THE WITNESS: The answer is yes and it was Midway.

7 MR. ANDERSON: Q. Is there a reason that you did not call  
8 upon Midway to report the production of a game which they  
9 accepted and made and sold? A. Yes.

10 Q. What is the reason? A. I didn't feel that the  
11 numbers made represented sums in excess of the advance and there-  
12 fore I felt that it was unnecessary.

13 Q. And you never asked for an accounting to establish whether  
14 that was true or false? A. No I did not.

15 Q. Did you ever discuss with Midway or Bally any patent rights  
16 which you might have on video machines? A. Yes.

17 Q. Did you ever discuss granting them any rights under patents  
18 which you might have on video machines?

19 A. Not as part of any current existing contract or obligation.

20 Q. In any other context did you discuss your patent rights  
21 on video machines with Bally or Midway? A. Yes.

22 Q. In what context did you discuss those?

23 A. I discussed with them that we did have several patents  
24 pending, that we would cover that under separate arrangements  
25 if and when those patents were finalized.

26 Q. When did that discussion occur? A. At the time

1 these other discussions were in progress.

2 Q. In early '72, March or April of '72? A. Yes.

3 Q. Did you ever have these subsequent discussions that you  
4 referred to that you would have after the patents issued?

5 A. Yes.

6 Q. When did you have that subsequent discussion?

7 A. It was probably March of this year.

8 Q. Were you personally involved in that discussion?

9 A. Yes I was.

10 Q. Was anyone else from Atari involved? A. No.

11 Q. With whom did you have that discussion?

12 A. With the counsel of Bally.

13 Q. Who was that, do you know? A. I can't remember.

14 Q. Mr. Tomlinson? A. Mr. Tomlinson.

15 Q. Anyone else at Midway or Bally that was involved in those  
16 discussions? A. Yes, Mr. Ross at Midway.

17 Q. Anyone else? A. No.

18 Q. Did this discussion occur in Chicago--

19 A. Yes it did.

20 Q. --or the Chicago area? Did that discussion involve your  
21 Patent 3,793,483?

22 MR. HERBERT: I will have to object here again. We are  
23 going well beyond the area of venue. Licensing or negotiations  
24 for licensing of Atari patents doesn't have anything to do with  
25 venue in a patent infringement suit based upon Magnavox patents,  
26 and in view of the fact it is so far beyond the area of venue

1 I instruct the witness not to answer.

2 MR. ANDERSON: Well, as you well know, Mr. Herbert, one act  
3 of infringement is an inducement of someone else to infringe  
4 and we certainly think this goes to the question of whether  
5 Atari induced others to infringe the Magnavox patents and there-  
6 fore it's certainly relevant and is likely to lead to admissible  
7 evidence on those issues.

8 Q. Mr. Bushnell, was the patent, of plaintiff's Bushnell  
9 deposition Exhibit 3, one of the patents which you did discuss  
10 with Midway or Bally?

11 MR. HERBERT: Go ahead and answer the question.

12 THE WITNESS: Would you rephrase the question?

13 MR. ANDERSON: Read it first.

14 (Pending question read by reporter.)

15 THE WITNESS: Yes.

16 MR. ANDERSON: Q. That was during the March 1974 meetings  
17 or meeting in Chicago? A. Yes.

18 Q. Did you discuss with Mr. Tomlinson or Mr. Ross whether or  
19 not there was any relationship between the Royalty Agreement,  
20 Ross deposition Exhibit 3, and rights under your patent, Bushnell  
21 deposition Exhibit 3? A. Yes.

22 Q. Please relate to me that discussion?

23 A. I felt that the patent was a separate situation to the  
24 Royalty Agreement.

25 Q. Has the Royalty Agreement, Ross deposition Exhibit 3, ever  
26 been canceled? A. No it has not.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118



1 Q. Has it ever been modified either in writing or orally?

2 A. No.

3 Q. During your meeting in March of '74 or at any time prior  
4 to that, did you discuss with anyone at Midway or Bally modi-  
5 fying the Royalty Agreement, Ross deposition Exhibit 3?

6 A. No.

7 Q. You indicated that there were I think four meetings or  
8 occasions when you were in Chicago in 1972 and you have described  
9 two of them. What was the next occasion when you were in Chicago  
10 in 1972?

11 A. I have described I was there  
12 for the MOA Show, I was there to teach a service school, I was  
13 there later to discuss this.

14 Q. And on the occasion when you had Pong with you?

15 A. That was a later occasion.

16 Q. That would be a third trip?

A. And I also went

17 to the MOA Show.

18 Q. That would be three as I understand it?

A. No.

19 Q. To teach the course?

A. Teach is one.

20 Q. Attend the MOA Show?

A. No. The MOA was the

21 last.

22 Q. And then to teach the Empire course was in March or April  
23 of '72.

A. Negotiate the contract.

24 Q. Negotiate the contract and when was that approximately?

25 A. It was March or April.

26 Q. Was that a separate trip from the teaching course, teaching  
trip?

A. Yes.

1 Q. At the end of 1972 approximately how many employees did  
2 Atari have? A. Probably in the neighbor-  
3 hood of 30.

4 Q. Did any of those 30, approximately 30 employees make any  
5 trips to Chicago in 1972? A. No.

6 Q. Approximately how many trips did you make to Chicago in  
7 1973? A. Maybe four.

8 Q. What is the first trip to Chicago that you recall making  
9 during 1973? A. Boy, I really can't re-  
10 collect. I believe it was in early summer, late spring.

11 Q. What was the purpose of the first trip that you can remember  
12 making to Chicago in 1973 or the Chicago area generally?

13 A. I don't recollect.

14 Q. What trip do you recall making to Chicago in 1973 speci-  
15 fically? A. MOA Show.

16 Q. Did Atari have a booth at the MOA Show in 1973?

17 A. Yes we did.

18 Q. As of the date of the MOA Show in 1973, approximately how  
19 many employees did Atari have? A. 250.

20 Q. Did other Atari employees attend the MOA Show beyond you?

21 A. Yes.

22 Q. Who in addition to you? A. They were Mr. Wake-  
23 field, Mr. Mobilio.

24 Q. M-o-b-i-l-i-o? A. Yes. Mr. Karns,  
25 K-a-r-n-s. Mr. Emmons.

26 Q. E-m-m-o-n-s? A. Yes. Mayer.

SOCRATES NICHOLSON

AND ASSOCIATES  
OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

- 1 Q. M-a-y-e-r? A. Right. Alcorn.
- 2 Q. A-l-c-o-r-n? A. Yes. Andres.
- 3 Q. A-n-d-r-e-s? A. Yes. Faraco.
- 4 Q. Will you spell that one? A. F-a-r-a-c-o. I think  
5 that is it.
- 6 Q. What was Mr. Wakefield's position at that time?
- 7 A. President.
- 8 Q. And is he a psychiatrist? A. Yes.
- 9 Q. Mr. Mobilio, what was his position? A. VP market-  
10 ing.
- 11 Q. Mr. Karns? A. National sales manager.
- 12 Q. Did he report to Mr. Mobilio? A. Yes he did.
- 13 Q. Mr. Emmons? A. Engineer.
- 14 Q. To whom did he report? A. To Mr. Alcorn.
- 15 Q. Mr. Mayer? A. Engineer.
- 16 Q. Did he report to Mr. Alcorn? A. Yes.
- 17 Q. Mr. Alcorn? A. Vice president of engineer-  
18 ing.
- 19 Q. Mr. Andres? A. That is Miss Andres. She  
20 is my secretary.
- 21 Q. Mr. Faraco? A. Engineer.
- 22 Q. Did Atari have just one booth space at the MOA or more than  
23 one? A. We had three contiguous  
24 booths.
- 25 Q. What did Atari have on display at the MOA in 1973 in the  
26 way of equipment? A. It had Pong, Space Race,

1 Pong Doubles, Getcha.

2 Q. Was there more than one of any of these games in the three  
3 booths, three contiguous booths of Atari?

4 A. Yes.

5 Q. How many Pongs? A. I don't remember.

6 Q. How many in all, approximately how many games in all?

7 A. I think there were approximately 10.

8 Q. Were they operative games? A. Yes.

9 Q. All of them? A. Yes.

10 Q. Were they operated at the show? A. Yes.

11 Q. Who got to keep the quarters? A. Free play.

12 Q. Did you use a token or just bypass the coin slot or how was  
13 it? A. Bypass the coin slot.

14 Q. During 1973 did Atari have any machines in the Chicago area  
15 at any location other than in the booths at the MOA--

16 A. No.

17 Q. --at any time? A. Would you clarify that  
18 question?

19 Q. Well you said that Atari had 10 machines approximately at  
20 the MOA. A. Yes.

21 Q. And now were they all in the booth space of Atari at MOA?

22 A. We had two other machines in a hotel suite.

23 Q. In the Conrad Hilton, was that? A. Yes.

24 Q. What machines were they? A. World Cup.

25 Q. Is that an automotive racing game? A. No.

26 Q. What is World Cup just generally? A. It's a ball

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 paddle game.

2 Q. What was the other game? A. Grantrak.

3 Q. Were they operative games? A. Yes.

4 Q. Were they actually operated during MOA? A. Yes.

5 Q. Has Atari at any other time in 1973 had a machine at any  
6 location other than the two you have mentioned?

7 A. No.

8 Q. At any time in the history of Atari has it had any machines  
9 in the Chicago area other than at the MOA in your booth space  
10 and in the Conrad Hilton in a suite that you have referred to?

11 A. Not machines which Atari has owned.

12 Q. How many World Cup games did you have in the suite?

13 A. One.

14 Q. How many Grantrak ten games? A. One.

15 Q. So you had approximately 12 games in Chicago during the  
16 MOA in 1973? A. Yes.

17 Q. Where did those games come from? A. Los Gatos.

18 Q. Were they invoiced to anyone or just kept in the property  
19 of Atari? A. Just kept on the property

20 of Atari.

21 Q. What was done with the machines after the show?

22 A. Most of them--some of them were shipped to Los Gatos.

23 Q. How many were shipped to Los Gatos? A. I don't  
24 remember.

25 Q. What became of the rest of them? A. They were  
26 shipped to Atlanta.

SOCRATES NICHOLSON  
AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 Q. For what purpose?

A. There was another show

2 down there.

3 Q. Did you at one time work for a Salt Lake City amusement  
4 machine company?

A. No.

5 Q. Were you in some way involved with a Salt Lake City amuse-  
6 ment machine company?

A. Well, there was a Salt  
7 Lake City amusement park.

8 Q. Is that the name of the entity?

A. No. It was

9 Lagoon Corporation.

10 Q. What was your involvement with Lagoon Corporation?

11 A. I was manager of the games department.

12 Q. Was that while you were in college?

A. Yes it

13 was.

14 Q. Did you have any relationship with Lagoon Corporation  
15 following your college career?

A. No, other than,  
16 you know, just being good friends with lots of people.

17 Q. Did Atari, Incorporated have any business relationship with  
18 Lagoon Corporation?

A. Yes.

19 Q. What is that relationship?

A. We sold an  
20 operation to Lagoon Corporation. We had machines in operation  
21 which I previously stated and sold that to Lagoon.

22 Q. Were those machines owned and operated by Atari, Incorporated  
23 or by some entity which Atari---

A. Some entity.

24 Q. What entity was that?

A. Called Merlin

25 Enterprises.

26 Q. When was Merlin Enterprises created?

A. The summer

1 of 1973.

2 Q. Does it still exist?

A. No it does not.

3 Q. When did it cease to exist?

A. Spring of 1974.

4 Q. Did it operate video machines?

A. Yes.

5 Q. What became of the video machines? Were they sold to  
6 Lagoon?

A. Yes.

7 Q. Are you familiar with an entity known as West World Amuse-  
8 ments?

A. No I am not.

9 Q. Does Atari, Inc. have any interest in Lagoon Corporation?

10 A. No it does not.

11 Q. Other than the trip to the MOA Show about which you have  
12 testified, what other specific trips do you recall making to  
13 the Chicago area during 1973?

A. I remember the  
14 trip in which we talked about royalty arrangements under the  
15 patent.

16 Q. Now, was that in 1973?

A. Oh excuse me,  
17 that was 1974. I'm sorry. I don't really recollect--maybe I  
18 didn't go there four times. I can remember the MOA. Things  
19 were so hectic I don't recollect. Maybe I only went there  
20 once in '73. That seems unlikely but--

21 Q. Do you keep records of your travel?  
22 be in my calendar.

A. It should

23 Q. Would you check and let us know how many trips you made to  
24 the Chicago area during 1973?

A. Sure.

25 Q. Did any other employees of Atari, Inc. make trips to the  
26 Chicago area during 1973 including the people that you have

1 mentioned that were at the show but of course excluding the  
2 show which you have already testified about?

3 A. I think Mr. Karns probably made a trip there.

4 Q. More than one trip?

5 A. I would say maximum of  
6 two.

7 Q. And Mr. Karns is national sales manager, is that his title?

8 A. That's correct.

9 Q. How does Atari, Inc. distribute its products in Chicago  
10 area?

11 A. It sells them to Empire Dis-  
12 tributing.

13 Q. Does it sell them to Empire Distributing exclusively in  
14 the Chicago area?

15 A. That is the only people, yes.

16 Q. Is there an agreement between Empire Distributing and Atari--

17 A. No.

18 Q. --either written or oral?

19 A. There is an oral agree-  
20 ment.

21 Q. Approximately when was that oral agreement reached?

22 A. Spring of '73.

23 Q. Were you personally involved in the reaching of that oral  
24 agreement?

25 A. Yes I was.

26 Q. Was that during one of your visits to Chicago?

27 A. No.

28 Q. How was it done?

29 A. On the telephone.

30 Q. With whom at Empire did you reach that oral agreement?

31 A. Gil Kitt.

32 Q. What is the oral agreement as best you understand it?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118



1 A. We would sell to Empire and no others in that area as long  
2 as, you know, they represented us fairly.

3 Q. Any other aspect of the agreement that you can recall that  
4 you discussed at that time?

A. Payment terms would  
5 be two percent, ten, net 30, and that they would pay shipment.  
6 The machines would be sold F.O.B. dock.

7 Q. Any other terms or conditions that you can recall?

8 A. No.

9 Q. Did you ever discuss with Mr. Kitt or anyone at Empire  
10 Empire's handling of competitive lines?

A. Yes.

11 Q. What was that discussion?

A. Oh just something  
12 to the effect that I was hopeful that more Atari games were  
13 being sold than anyone else's.

14 Q. When did that occur?

A. Over the phone at  
15 various times.

16 Q. Any other discussions with respect to competitive lines?

17 A. Not to my recollection.

18 Q. Has there ever been a training course for Empire personnel  
19 with respect to Atari games of the type you described you con-  
20 ducted with respect to Nutting?

A. Yes.

21 Q. When have they occurred?

A. I think there  
22 has been one that was conducted by Mr. Arkus. Excuse me, that  
23 is not true. It was one of the employee technicians of Atari.  
24 I don't remember who.

25 Q. When was that course held?

A. Probably in early  
26 fall of '73. Joe Alig.

- 1 Q. What is his title with Atari? A. He is no longer  
2 with Atari.
- 3 Q. What was his title when he was there? A. Customer  
4 service.
- 5 Q. Customer service manager? A. No, just customer  
6 service.
- 7 Q. Customer service man. For how long was the training course  
8 at Empire? A. Probably one day.
- 9 Q. Did Mr. Alig make a tour at that time of several distribu-  
10 tors? A. Yes.
- 11 Q. Was the training course that you referred to in Chicago at  
12 Empire? A. Yes.
- 13 Q. Did he teach at any other Midwest locations?  
14 A. I'm sure he did.
- 15 Q. Do you know any of them? A. Probably it would be  
16 Omaha, probably Minneapolis. I think the next closest Midwest  
17 would be--I guess we jumped from there over to New York.
- 18 Q. Did he go to any other Empire installation other than the  
19 one at Chicago, do you know? A. No he did not.
- 20 Q. I understand they have places of business in other cities.  
21 A. Yes. Can I get a glass of water?
- 22 Q. Certainly. Why don't we take a break and I will look  
23 through those invoices at this time.
- 24 (Short recess.)
- 25 MR. ANDERSON: Q. Earlier Mr. Bushnell, when I asked you  
26 for the basic blocks of a video amusement machine you mentioned

1 a TV monitor. Has Atari used commercial TV receivers in con-  
2 trast to monitors at any time in its manufacture of games or  
3 amusement machines?

4 A. No it has never used a  
5 TV receiver. It has used what was once a TV receiver.

6 Q. Was it purchased by Atari as a TV receiver and modified in  
7 some way?

8 A. Yes.

9 Q. We have gone through the invoices. At the moment I see no  
10 need to require copies or ask you to delete portions. We might  
11 at some future date want one or two of the earliest or latest  
12 but I think for the moment the easiest procedure is just to ask  
13 you one or two questions about them. I notice several of them  
14 relating specifically to the shipment of computers. Are they  
15 sold as such or are they only sold as replacement items, do you  
16 know? I have one here two Pong computers shipped at apparently  
17 no charge, N/C.

18 A. We have a warranty policy  
19 that they are shipped as a computer.

20 Q. Are they a replaceable item in the field, the computer?

21 A. Yes they are.

22 Q. This particular one is Invoice No. 3866 to Empire. Does  
23 Atari from time to time ship computers to Empire in Chicago  
24 for replacement purposes?

25 A. Occasionally.

26 Q. I noticed several relating to harnesses. What is a harness?

27 A. It's the wiring, the internal wiring of the machine.

28 Q. Why does Atari ship harnesses to Empire as indicated by  
29 some of these invoices?

30 A. Occasionally a connector  
31 becomes defective and it's cheaper to replace it than repair it.

1 Q. What promotional activities in general does Atari conduct  
2 with respect to the sale of its video amusement machines?

3 A. We occasionally advertise.

4 Q. Where does Atari advertise, in what outlets or--

5 A. Primarily Cash Box which is a trade rag.

6 Q. What other promotional activities does Atari--Cash Box is  
7 a nationally distributed magazine, I take it?

8 A. Yes.

9 Q. What other means of promotion does Atari employ?

10 A. The MOA Show.

11 Q. Any others?

A. No.

12 Q. Has Atari ever shipped a machine to a distributor for a  
13 field test or market test?

A. Well, I mean many of  
14 the machines are for market test but we sell them.

15 Q. Has Atari ever sold a machine for a test where the terms  
16 were in any way different from the ordinary terms that you  
17 testified about earlier?

A. No. Occasionally if  
18 we feel that a machine is what we consider to be not a production  
19 run we will have a reduced price on it.

20 Q. Do you ever permit deferred payments for a market test  
21 machine?

A. No, not really.

22 Q. What are your terms for return of a machine that a customer  
23 doesn't want to keep?

A. Generally there are no  
24 provisions for a return.

25 Q. And specifically other than the generalization if Empire  
26 took a new machine and decided they didn't think it fitted

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 their market needs, could they return it to you?

2 A. They could at our discretion.

3 Q. Has this ever occurred that you know of?

4 A. We reshipped on occasion.

5 Q. You have reshipped. What do you mean by that?

6 A. Well, let's see, it would be a situation where if Empire  
7 didn't want the machine they would call us and sometimes we  
8 would actually take it back.

9 Q. And it has occurred with respect to Empire?

10 A. On two occasions, yes.

11 Q. What two occasions, do you recall specifically?

12 A. There was a situation of a Quadrapong machine which they  
13 couldn't get to function properly so rather than, you know,  
14 repair it they decided to return it and we agreed.

15 Q. Were both of the two occasions you referred to Quadrapong?

16 A. Yes they were. Oh excuse me. There was one other in which  
17 it was a Grantrak that was a real lemon.

18 Q. But again it was a defective machine?

19 A. Yes it was.

20 Q. Has Atari ever accepted a returned machine for grounds  
21 other than malfunction?

A. No. It's not our policy.

22 Q. Approximately what percentage of the industry sales of  
23 video amusement machines does Atari have in your professional  
24 opinion?

A. I just don't know. I would  
25 like to know.

26 Q. Is there any trade source that from time to time issues

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 such information?

A. Not to my knowledge. If  
2 you find it would you let me know?

3 Q. From your knowledge of the industry, what is the sales  
4 trend in the video amusement machine business?

5 MR. HERBERT: I object to that question. That has nothing  
6 to do with anything in the lawsuit. I instruct the witness  
7 not to answer.

8 MR. ANDERSON: Q. Other than the specific instances that  
9 you have already testified about where Atari has placed machines  
10 for street operations, has Atari ever sent out a machine or sold  
11 a machine based upon a return that is a function of the revenue  
12 produced?

A. Not to my recollection  
13 other than those previously mentioned occasions.

14 MR. HERBERT: Perhaps I misunderstood the question. By  
15 return other than you mean being paid as a percentage of the  
16 take of the machine?

17 MR. ANDERSON: Yes or anything other than a fixed price  
18 sale.

19 Q. Is there any instance where Atari has sold a machine on  
20 anything except a set price sale or the instances of street  
21 operations that you have already testified about?

22 A. No.

23 Q. During your meeting in the spring of 1974, with Mr. Tomlinson  
24 and perhaps Mr. Ross, did you discuss the Magnavox patent  
25 position?

A. Yes we did.

26 Q. What was that discussion?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 MR. HERBERT: Objection on this. Again we are getting  
2 beyond the area of venue.

3 MR. ANDERSON: I don't know that that is true and I don't  
4 see how you do unless you know what this discussion was, Mr.  
5 Herbert. We have certainly established a relationship between  
6 Midway, Bally, Empire and Atari and I think we are entitled to  
7 explore it fully.

8 MR. HERBERT: All right.

9 MR. ANDERSON: Q. Will you answer the question please?

10 A. We discussed prior art that I have--which I had, not I have.

11 Q. Prior art with respect to the patent that Magnavox is  
12 asserting? A. Yes.

13 Q. How did that subject of prior art first come up during the  
14 meeting? A. There was a, you know, a ques-

15 tion was asked, what do you think about the Magnavox situation.

16 Q. Someone asked that of you? A. Yes.

17 Q. Was that Mr. Tomlinson, do you recall?

18 A. No. I think it was Mr. Ross.

19 Q. What was your response?

20 MR. HERBERT: Objection. Now I do instruct the witness  
21 not to answer. This has nothing to do with venue, it only has  
22 to do with validity and possible scope of the patent.

23 MR. ANDERSON: Q. What prior art did you refer to in that  
24 conversation?

25 MR. HERBERT: Objection, same reason, instruct the witness  
26 not to answer for the same reasons.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 MR. ANDERSON: Q. What other aspects of the Magnavox  
2 situation were discussed during that meeting other than your  
3 discussion with them of prior art that you had?

4 A. The question was raised if anyone felt that Magnavox was  
5 going to sue.

6 Q. At the time of your meeting was there not a lawsuit pending?

7 A. No there was not.

8 Q. Was there any discussion of any of the Bally companies  
9 indemnifying or holding Atari harmless in any way in the event  
10 of a lawsuit? A. No.

11 Q. Was there any discussion of the possibility of Atari holding  
12 any of the Bally companies harmless or indemnifying them in  
13 the event of a lawsuit? A. I would like to confer

14 for a second.

15 (Short recess.)

16 THE WITNESS: Would you restate the question?

17 MR. ANDERSON: Would you read the question please?

18 (Pending question read by reporter.)

19 THE WITNESS: There was a discussion of a future further  
20 agreement in which one of the provisions that we were discussing  
21 was a provision of indemnification.

22 MR. ANDERSON: Q. Was this a further agreement between  
23 Atari and one of the Bally companies?

24 A. There were no further agreements.

25 Q. I mean was there discussion with respect to a possible  
26 further agreement? A. Yes.



1 Q. That is what you are referring to in your last answer?

2 A. Yes.

3 Q. With which Bally company was that being discussed or with  
4 respect to which? A. It was with Mr. Tomlinson.

5 Q. And was he speaking then for Midway or Bally or Empire or  
6 do you know? A. I don't know.

7 Q. Did he distinguish between those various companies during  
8 your discussion? A. I don't recollect.

9 Q. Do you know who he was representing during the discussion?  
10 Was it Midway or somebody else? A. I don't know.

11 Q. What was the discussion with respect to indemnification  
12 in the event of a future agreement?

13 MR. HERBERT: I am going to object to this. Again this  
14 witness has already testified there has been no agreement for  
15 indemnification and as far as the discussion as to what the  
16 future might be, I think that is pretty far afield again from  
17 the area with which we are concerned here so I instruct the  
18 witness not to answer.

19 MR. ANDERSON: I think the record in this deposition and  
20 prior ones shows a rather close relationship between these  
21 companies and I think we are entitled to explore it.

22 MR. HERBERT: Between what companies?

23 MR. ANDERSON: Between Midway, Bally, Atari and Empire.

24 MR. HERBERT: Maybe I misunderstood your question but I  
25 think Mr. Bushnell already indicated he didn't know which of  
26 those companies the other party was representing and I may have

SOCRATES NICHOLSON

AND ASSOCIATES  
OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 misunderstood your question.

2 MR. ANDERSON: Your summary is exactly in accord with mine  
3 and my question is what was discussed between Mr. Tomlinson  
4 and Mr. Ross and Mr. Bushnell at the meeting in the spring of  
5 1974 with respect to possible indemnification regarding the  
6 Magnavox patent claims and I would like you to answer that as  
7 best you can, Mr. Bushnell.

8 THE WITNESS: Well, it was primarily geared around, you  
9 know, the discussion of some of the prior art which I had and  
10 that I felt that Atari would, you know, as a part of a Royalty  
11 Agreement take on that burden.

12 MR. ANDERSON: Q. Now what burden is that?

13 A. In the event of a possible Magnavox patent infringement  
14 suit.

15 Q. And the burden would be what, that Atari would defend the  
16 suit?

A. Yes.

17 Q. Have there been any further discussions since the meeting  
18 between Mr. Tomlinson, Ross and you regarding this subject  
19 matter?

A. No.

20 Q. Either telephone or personal?

A. No.

21 Q. Have you discussed this subject matter with anyone, any  
22 of the Bally companies since that meeting in Chicago?

23 A. No I haven't.

24 Q. Did you ever discuss that subject matter with anyone in  
25 any of the Bally companies prior to the meeting in Chicago  
26 with Mr. Tomlinson and Ross in March or April of this year?

1 A. I had mentioned on the telephone that I had a situation  
2 which I felt would be of interest to them and it included the  
3 indemnification provision.

4 Q. When was that conversation? A. It was probabaly  
5 a week prior to my visit.

6 Q. And the proposal that you thought might be of interest to  
7 them included Atari's assumption of responsibility for defending  
8 claims by Magnavox, is that correct? A. Yes.

9 Q. Did it also involve a license under Atari patent rights?

10 A. Yes.

11 Q. Did it involve any exchange of know-how?

12 A. No it didn't.

13 Q. Or any engineering help of any kind?

14 A. Strictly a license under our patent.

15 Q. Prior to that telephone conversation had you ever discussed  
16 with anyone associated with any of the Bally companies the  
17 Magnavox patent rights and claims? A. I was aware of

18 it. We had discussed the existence of the Magnavox patents.  
19 That was about the extent of it.

20 Q. Have you had any discussions with any other manufacturers  
21 of video amusement machines with respect to the Magnavox patent  
22 position? A. Yes I have.

23 Q. With whom? A. Oh I think a fellow, Gary  
24 Stern from Seeburg.

25 Q. G-a-r-y? A. Yes.

26 Q. S-t-e-r-n? A. Yes.

SOCRATES NICHOLSON

AND ASSOCIATES  
OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 Q. Who else? A. Gene Lipkin from Allied  
2 Leisure.

3 Q. Who else? A. That is about it.

4 Q. On how many occasions have you discussed the Magnavox  
5 patent position with Gary Stern? A. I think I can  
6 only think of one phone call.

7 Q. When was that approximately? A. I really don't  
8 know. It was prior to being served.

9 Q. Was it this year? A. I don't believe so.

10 Q. Who initiated the phone call? A. He did.

11 Q. Was it to inquire specifically about the Magnavox patent  
12 position? A. Yes I believe it was.

13 Q. Approximately how long did the phone call last?

14 A. Five, ten minutes.

15 Q. Relate as best you can what he said to you and what you  
16 said to him?

17 MR. HERBERT: Objection again. It's still way beyond  
18 venue. It has nothing to do with this whole lawsuit. You are  
19 going far beyond. I instruct the witness not to answer.

20 MR. ANDERSON: Q. Will you answer?

21 A. No I will not.

22 Q. On how many occasions did you discuss the Magnavox patent  
23 position with Gene Lipkin? A. One.

24 MR. HERBERT: Objection.

25 MR. ANDERSON: Q. On one occasion, is that right?

26 A. I will not answer.

1 Q. Mr. Herbert has not instructed you not to answer, he has  
2 merely recorded an objection.

3 MR. HERBERT: The answer is already in the record so I  
4 will let it stand.

5 MR. ANDERSON: Q. Approximately when was that one dis-  
6 cussion with Mr. Lipkin?

7 MR. HERBERT: Objection again and instruct the witness not  
8 to answer.

9 MR. ANDERSON: I think these questions have relevance on  
10 the Atari involvement in Chicago.

11 MR. HERBERT: Not as you have made the questions insofar as  
12 what did you discuss about the Magnavox patent position, it's  
13 too broad.

14 MR. ANDERSON: It's the only way you can get the specific  
15 questions to establish a foundation, it's fundamental. If I  
16 did it any other way you would have a valid objection.

17 Q. Approximately when was that one discussion with Mr. Lipkin?

18 MR. HERBERT: Answer that one.

19 THE WITNESS: I think that was probably in the summer of  
20 '73.

21 MR. ANDERSON: Q. Was that a telephone conversation?

22 A. Yes it was.

23 Q. Who initiated the call? A. I don't recollect.

24 Q. Approximately how long did it last? A. 10, 15  
25 minutes.

26 Q. Was it initiated specifically with respect to the Magnavox

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 patent position?

A. No it wasn't.

2 Q. Have you ever had any business relationship with any other  
3 manufacturers of video amusement machines other than the ones  
4 you have already testified about?

A. In terms of

5 sales or--

6 Q. Sales, engineering help, agreements of any kind with Allied  
7 Leisure?

A. No.

8 Q. With Chicago Dynamic?

A. No.

9 Q. With Seeburg?

A. No.

10 Q. With Ramtek?

A. No.

11 Q. Are you familiar with Universal Research Laboratories?

12 A. Yes.

13 Q. Have you ever had any business dealings of any kind with  
14 Universal Research Laboratories?

A. No.

15 Q. Do you know whether Universal Research Laboratories is in  
16 the video amusement machine business in any way?

17 A. I don't know of any of their dealings. All I know is what  
18 I have heard.

19 Q. Has Atari at any time granted any rights to anyone other  
20 than one of the Bally companies under the agreements you have  
21 already discussed to make or sell video amusement machines?

22 A. Not as far as our computers. We are the sole manufacturer  
23 of our computers.

24 Q. Do you sell your computers to others for incorporation  
25 into video amusement machines?

A. Yes.

26 Q. To whom?

A. Various companies.

1 Q. Approximately how many companies have you sold your computers  
2 to for incorporation into their own video amusement machines?

3 A. Probably four.

4 Q. What are the names of those companies?

5 A. Atari U.K. No relation as a company, they just use our  
6 name. Socodimxsa.

7 Q. Is that a South American company or Mexican?

8 A. No, French.

9 Q. To whom else have you sold? A. Segasa.

10 Q. Where is Segasa located? A. Spain.

11 Q. Is Segasa related in any way to Seeburg, do you know?

12 A. I believe that it is.

13 Q. Do you know how? A. I think Seeburg owns  
14 a percentage of them although I am not sure of what that is.

15 Q. And to whom else has Atari sold its computers for incor-  
16 poration into machines? A. Hunter Electronics,

17 PTC, LTD, Australia.

18 Q. Do you restrict in any way the places in which these four  
19 companies can resell their complete machines?

20 A. No.

21 Q. Do you know whether any of them do resell them in the United  
22 States or for shipment to the United States?

23 A. None to my knowledge.

24 Q. You gave me a list of machines at the beginning of the  
25 deposition and I will lay before you my list. Is that a  
26 complete list of the games which Atari, Inc. now has in their

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 line? A. There is one more and I don't  
2 know what it is. No. Yes that is a complete list.

3 Q. Do you know Joseph Robbins? A. Yes I do.

4 Q. Have you met with him personally? A. Yes I have.

5 Q. In Chicago? A. Yes.

6 Q. Anywhere else? A. He visited my factory at one  
7 time.

8 Q. Have you met with him on each occasion of your traveling  
9 to Chicago do you know? A. No I haven't.

10 Q. Approximately on how many occasions have you met with him  
11 in Chicago? A. Oh probably three or four.

12 Q. Do you know Mr. Wolverton? A. Yes I do.

13 Q. Have you met with him personally? A. Yes.

14 Q. On what occasions? A. On visits to Midway.  
15 I think I met him twice.

16 Q. He is the president of Midway, is that correct?

17 A. Yes.

18 Q. Were these occasions other than the ones that you have  
19 already testified about or-- A. No. They were  
20 in conjunction with those previous meetings.

21 Q. Have you met Mr. David Braun? A. Yes I have.

22 Q. On what occasions, if you recall?

23 A. At the MOA Show.

24 Q. And he is an officer of Allied Leisure, am I correct?

25 A. That's correct.

26 Q. At what other shows have you shown video amusement machines

SOCRATES NICHOLSON

52 SECOND STREET

AND ASSOCIATES  
OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

(415) 362-0116



1 other than MOA and I think you said one in Atlanta?

2 A. IAAP.

3 Q. What does that stand for? A. International Associ-  
4 ation of Amusement Parks.

5 Q. Is that the show that is in Atlanta? A. Yes.

6 Q. Have you ever shown at any others?

7 A. Oh there have been some small regional shows. Whether you  
8 can really call them shows or not is hard to say.

9 Q. Any in the Midwest? A. I think there was one  
10 in Omaha.

11 Q. Any others that you can recall? A. No.

12 Q. Was that in 1973 in Omaha? A. Yes.

13 Q. Have you shown in the Atlanta IAAP on more than one occa-  
14 sion? A. No.

15 Q. That was in 1973 also? A. That's correct.

16 Q. When did you first learn of the video game that ultimately  
17 became known as Odyssey of Magnavox?

18 MR. HERBERT: Objection. That has nothing to do with  
19 the venue question either. I instruct the witness not to answer.

20 MR. ANDERSON: Q. What initiated the original discussion  
21 between you and Bally with respect to video games? Did you  
22 initiate it or did someone in the Bally companies?

23 A. I initiated it.

24 Q. Did you approach other people at the time that you approached  
25 the Bally companies or were they the only company that you  
26 approached in the manner indicated by the exhibits that already

1 are of record?

A. Nutting Associates---I don't  
2 know whether I approached them but upon leaving Nutting  
3 Associates I agreed to complete a prototype game for them.

4 Q. Is anyone else other than you involved in the design or  
5 engineering of the computers for Atari?

6 A. Yes.

7 Q. Anyone outside of Atari? In other words, not an employee  
8 of Atari.

A. No.

9 Q. Has Atari ever made an attachment for a TV receiver in the  
10 nature of Odyssey?

A. What do you mean?

11 Q. In other words, something that could be attached to a home  
12 TV receiver.

A. As a product?

13 Q. As a product or proposed product?

14 A. No it hasn't.

15 Q. Has it done any work on that product line or potential  
16 product line?

17 MR. WELSH: I'm wondering how that is relevant as to  
18 potential product line. I will object to that. I would like  
19 to request you to speed up if you could. I am right at the  
20 door and no go.

21 THE WITNESS: Atari has the capability of doing that if it  
22 wishes to.

23 MR. ANDERSON: I will try to cut it short.

24 Q. Has it done it? You say it has the capability. Has Atari  
25 done any work?

A. On the consumer product?

26 Q. Yes.

A. Yes it has.

1 Q. Has it ever sold a product for the consumer market?

2 A. Well, we have had people who are nonprofessionals buy our  
3 coin operated pieces but that is the extent of it.

4 Q. Has Atari ever sold the computer part apart from a TV  
5 receiver or monitor other than to the four customers you named  
6 for incorporation by the customer with a TV receiver?

7 A. Not to my knowledge. I think there were some small  
8 companies in South America.

9 (Short recess.)

10 MR. ANDERSON: I have just one or two further questions.

11 Q. Is Mr. Wakefield still with Atari?

12 A. No he is not.

13 Q. When did he terminate? A. Three weeks ago. We  
14 had a significant reduction in personnel.

15 MR. ANDERSON: I will have the reporter mark as Bushnell  
16 deposition Exhibit 4 a copy of the affidavit of John C. Wake-  
17 field.

18 (Copy of affidavit of John  
19 C. Wakefield marked Bushnell  
20 deposition Exhibit No. 4 for  
identification.)

21 MR. ANDERSON: Q. Mr. Bushnell, are you familiar with  
22 Bushnell deposition Exhibit 4? A. Yes I am.

23 Q. Has Atari, Inc. at any time during its existence had a  
24 telephone in the northern district of Illinois?

25 A. No it hasn't.

26 Q. Or a representative located there? A. No.

1 Q. Has it ever had a business location there of any kind?

2 A. None whatsoever.

3 Q. Has Atari, Inc. ever accepted trade-ins of machines that  
4 it previously sold? A. Never.

5 Q. Has it ever purchased back a machine that it sold other  
6 than the one that I think you mentioned earlier that was  
7 defective? A. No it has not.

8 Q. Does Atari have any licensees other than the relationship  
9 to Nutting that you mentioned under Bushnell deposition Exhibit  
10 3? A. There is no agreement between  
11 Nutting and Bushnell on this agreement.

12 Q. I think you said there was some relationship that was  
13 terminated. A. We had an agreement but  
14 it had nothing to do with our patent.

15 Q. Does Atari have any licensees under Bushnell Exhibit 3?

16 A. No.

17 Q. When did Atari first become aware of the patents under which  
18 Magnavox makes its claims? A. Vaguely or detailed?

19 Q. Well, vaguely. A. It was probably  
20 middle--I would say 1972, middle of '72.

21 Q. How did Atari gain that awareness?

22 A. There was some mention of the existence of such patents  
23 from Bally Corporation.

24 Q. Was that during a meeting? A. Yes.

25 Q. In Chicago? A. Yes.

26 Q. Was that the meeting when you entered into this agreement?

1 A. When we negotiated it.

2 Q. When you negotiated it. Has Atari, Inc. ever indemnified  
3 any customer against infringement of the patents under which  
4 Magnavox makes its claims? A. No it has not.

5 Q. When did Atari gain more specific knowledge of the Magnavox  
6 patents, more specific knowledge than your vague information  
7 in the summer of '72? A. It was probably--I  
8 went home and I think I applied for a copy of those patents  
9 and I think it was two or three months thereafter.

10 Q. Did Bally give you the patent numbers during the meeting?

11 A. I don't recollect.

12 Q. How did you apply for copies of them or request them?

13 A. I must have had patent numbers. My secretary--I just said  
14 that I understand there is a Magnavox patent and she as good  
15 little secretaries do came up with the goods.

16 MR. ANDERSON: We have no further questions.

17 MR. WELSH: I have no cross-examination.

18 MR. ANDERSON: I would suggest we agree that Mr. Bushnell  
19 can sign the deposition before any notary public.

20 MR. HERBERT: So stipulated.

21 (Whereupon, the taking of the deposition was  
22 concluded.)

23  
24 \_\_\_\_\_  
25 (Signature of Witness)

26 \_\_\_\_\_  
(Date of Signature)